UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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June 26, 2008

Ref: 8EPR-SA

Mr. R. Mark Wilson
United States Department of the Interior (DOI)
U.S. Fish and Wildlife Service (USFWS)
Ecological Service – Montana Field Office
585 Shepard Way
Helena, Montana 59601

Subject: Consultation Requirements of Section 7(a) of the Endangered Species Act (ESA) vs. Substantive Requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for On-Site Clean-Ups for the Creeks - Callahan, Cherry (Granite), and Flower.

Dear Mr. Wilson:

I am writing in response to your May 19, 2008 letter regarding "EPA's responsibility to consult with the Service pursuant to Section 7 of the ESA" for on-site CERCLA removal cleanups of the asbestos-contaminated creeks located in Libby and Troy, Montana. I have carefully reviewed the following legal documents and your letter, and agreed with you that the response effort must coordinate all necessary containment and mitigation measures including removal tactics to ensure timely, effective removal/response that minimizes adverse impact to the environment as well as natural resources. All parts of the national response strategy should be addressed concurrently, but protection of human life or health, safety and stabilization are the highest priority. The priorities set forth in the National Oil and hazardous Substances Pollution Contingency Plan (NCP) are broad in the nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

1. *National Oil and hazardous Substances Pollution Contingency Plan (NCP)*: On-site CERCLA investigative and response actions are not required to meet administrative requirements, such as consultation and reporting requirements (NCP, 55 Fed. Reg. 8666, 8756]. However, it is recommended that the lead agency nevertheless consult with the administering agencies to ensure compliance with substantive requirements and to take advantage of their expertise, when an issue arises that is under their jurisdiction (NCP, 55 Fed. Reg. 8666, 8757).

2. *Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous*

Substances Pollution Contingency Plan and the Endangered Species Act ("Agreement"): The Parties to this Agreement are the U.S. Coast Guard (USCG), USEPA, DOI, USFWS, and the National Oceanic and Atmospheric Administration (NOAA). Furthermore, the legal authorities for this Agreement consist of the Federal Water Pollution Act (FWPCA, 33 U.S.C. § 1321) and the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.). This Agreement is intended to be used only for **oil** spill planning and responsibilities including consultation requirements under Section 7 of ESA (Agreement, Section I - Introduction, II – Purpose, III – Legal Authorities).

3. *Fish and Wildlife Coordination Act (FWCA)*: Similar to ESA, the FWCA protects fish and wildlife through the review of actions that control or structurally modify a natural stream or body of water. The consultation with USFWS is required under CERCLA Removal Action only if alteration (e.g. a change in the rate of water flow) of the water resource would occur from off-site activities as well as on-site activities.

In respect to minimize impacts to natural resources and to assist trustees in carrying out their responsibilities, I have coordinated closely with one of your staff, Lowell Whitney (Fish & Wildlife Biologist), as well as Jeffrey Dillon (Fisheries Biologist/U.S. Army Corps of Engineers (USACE)), and Charles Ifft (Inspection of Completed Works/USACE) for the Final Removal Designs for the creeks. Due to the close proximity to and similarities in fish and wildlife habitat, all removal activities including restoration will follow the Conservation Measures and Best Management Practices (BMPs) established within the Biological Evaluation (BE) completed by USACE for Granite Creek and Callahan Creek (2008 Levee Rehabilitation Program – Big Cherry Creek & Granite Creek, USACE). The removal activities for the Callahan and the Cherry creeks are scheduled during the July 15 to August 31, 2008 work window established by the Montana Fish, Wildlife and Parks and USFWS to coincide with the USACE's rehabilitation activities and when the bull trout are least likely to be in the area. Subsequently, the Flower Creek clean-up will be followed upon the completion of the creeks.

I have attached the Removal Design for Flower Creek and the Biological Evaluations for Big Cherry and Callahan Creeks developed by USACE for your information. The Removal Designs for Big Cherry and Granite Creeks will be available in the next few weeks upon the completion of hydrologic assessment. Brief descriptions of the planned designs for removal are provided below:

1. Background Information:

In the winter 1995/96, southern Lincoln County experienced flooding in almost all of its creeks. In response, Lincoln County and USACE undertook flood control and stream bed stabilization efforts in the Spring/Summer of 1996. Repair work was performed on at least five creeks: Libby Creek, Big Cherry (Granite) Creek, Flower Creek, Parmenter Creek, and Callahan Creek. Records indicate that one of the three sources of riprap used for this work was a quarry operated by the Kootenai Development Corporation within the boundaries of the former vermiculite mine. Portions of this quarry contain intrusive veins of Libby Amphibole Asbestos (LA). Field inspection conducted in July and August 2007 found LA-bearing rocks in three of the five

creeks: Flower Creek, Granite, and Callahan Creek. Rocks of nearly pure LA, up to 50 pounds each were found either incorporated into the riprap or coated onto the riprap.

The creeks in Libby see an abundance of recreational use. As Libby has no swimming pool, the creeks tend to be popular swimming locations in summer months. At the Flower Creek, children have frequently used riprap along the bottom and banks to construct small dams. This creates a "swimming hole" behind the dams. Unfortunately, this tends to increase of direct contact of children with the LA-bearing rocks.

2. Flower Creek Design

Field investigations completed along Flower Creek in 2007 and 2008 have determined that riprap and soil along various sections of embankment, upstream of the Balsam Street Bridge, are contaminated with LA asbestos. Total estimated volume of affected creek banks is approximately 1,700 cubic yards.

Access to Flower Creek will be gained through properties adjacent to or within the vicinity of the contaminated embankment material.

Remedial activities will include the removal and disposal of contaminated material in accordance with applicable governing documents.

Restoration activities will include the placement of clean structural fill and riprap material along all affected areas to match original line and grade. Riprap will be sized to match existing material.

Limited work within the creek bed is expected, consisting of removal of individual riprap pieces that have been moved into the creek bed by creek flows or human activities.

3. Granite Creek Design

A field investigation completed along Granite Creek in May 2008 determined that riprap and soil along the left bank upstream of the Highway 2 Bridge is contaminated with LA asbestos. Total estimated volume of affected creek bank is approximately 10,000 cubic yards.

Access to Granite Creek will be along an established gravel path on top of the levee.

The remedial approach will vary depending on the outcome of hydraulic modeling within this section of creek. Along all portions of the creek where discharge capacity is reduced by a slight decrease in the cross sectional area, remedial activity will include the removal of visible LA-bearing rocks.

Subsequently, a thin layer of shotcrete will be applied to the surface of all contaminated material prior to the placement of clean riprap. The intent of placing the shotcrete is to mitigate airborne releases of friable LA fibers. It is expected that the shotcrete will form cracks as the embankment expands and contracts; however, the contaminated material should remain encapsulated. Since

the shotcrete will not completely fill in all voids between the riprap, the migration of groundwater into the creek should not be affected.

Final restoration activities will include the placement of a layer of clean riprap onto the shotcrete encapsulate.

No work within the creek bed is expected.

3. Callahan Creek Design

A field investigation completed along Callahan Creek in May 2008 determined that riprap and soil along the left bank upstream of the Highway 2 Bridge (Troy, Montana) is contaminated with LA asbestos. Total estimated volume of affected creek bank is approximately 3,000 cubic yards.

Access to Callahan Creek will be along an established gravel path on top of the levee.

Remediation and restoration activities will be similar to those along Granite Creek (see above).

No work within the creek bed is expected.

4. Conservation Measures and Best Management Practices

These three designs will include written direction for the removal contractors to follow Best Management Practices (BMPs) consistent with the Granite and Callahan Creek Biological Evaluations (BEs). It is important to note that these BMPs reference the identified species discussed in Section 7 of the BE – "Evaluation of Project Effects on Protected Species", notably the Bull trout (USACE 2008). Specifically, the following seven BMPs will be included as part of these designs:

1. Equipment used near the water will be cleaned prior to construction activities.
2. Work will be conducted during a period of low flow.
3. Biodegradable hydraulic fluids will be used in machinery where appropriate.
4. Refueling will occur on the backside of the levee or on established staging areas.
5. Construction equipment will be regularly checked for drips or leaks.
6. At least one fuel spill kit with absorbent pads will be onsite at all times.
7. Drive trains of equipment will not operate in the water.

5. Reference Documents (will be provided upon request)

U.S. Army Corps of Engineers. Seattle District. 2007. *Project Information Report, Rehabilitation of Damaged Flood Control Works, Granite Creek, Libby, Montana (KOO-02-07).* Seattle, Washington: U.S. Army Corps of Engineers.

U.S. Army Corps of Engineers. Seattle District. 2008. *Biological Evaluation: 2008 Levee Rehabilitation Program, Callahan Creek, Lincoln County, Montana.* Seattle, Washington: U.S. Army Corps of Engineers.

U.S. Army Corps of Engineers. Seattle District. 2008. *Biological Evaluation: 2008 Levee Rehabilitation Program, Big Cherry Creek (Granite Creek Levee), Lincoln County, Montana.* Seattle, Washington: U.S. Army Corps of Engineers.

I hope that we have sufficiently addressed your concerns. If you have any questions or need additional information, please contact me at 303-312-6509. Thank you for your continued support.

Sincerely,

Duc Nguyen, FOSC
Emergency Response Unit

cc: Lowell Whitney, USFWS (no attachment)
Charles Ifft, USACE/Seattle District (no attachment)
Jeffrey Dillon, USACE/Seattle District (no attachment)

Attachment